

BEFORE THE THREE MEMBER DUE PROCESS PANEL  
PURSUANT TO RSMO SEC. 162.961

, et al.,	)	
	)	
	)	Petitioners,
vs.	)	
	)	
CRAWFORD COUNTY R-II	)	
SCHOOL DISTRICT,	)	
	)	
	)	Respondent.

**FINDINGS OF FACT**

(dob:) is a -year-old boy who has resided in the Crawford County R-II School District (“the District”) since February 2001 with his parents, and , sister , and brother . and attend school in the District.

is a child with a disability as defined by the Individuals with Disabilities Education Act (“IDEA”). has cerebral palsy and severe to profound bilateral hearing loss as a result of cytomegalovirus (“CMV”), and is nonverbal. uses hearing aids that allow him to hear speech tones, although it is unclear how much speech he can understand. exhibits both cognitive and adaptive behavior delays. also is language delayed and is both gross and fine motor delayed.

In 1996, an Assessment Team Report was completed by the Petal School District in Mississippi. Assessment data was found to be consistent and to provide a realistic picture of ’s functioning levels. The team members found that significant delays in the

areas of gross and fine motor, language, social, and cognitive were indicated. 's disability category was found to be hearing impaired.

For approximately four years prior to February 2001, attended a classroom for the hearing impaired at the Dixie Attendance Center, which was not part of the Petal School District and was not the school closest to 's home. The Petal School District "co-oped" with Dixie because the Petal School District did not have anyone that knew sign language well enough to teach . received instruction in sign language while at the Dixie Attendance Center and was instructed by a certified hearing instructor. His class had 4 to 5 students, none of whom had disabilities other than a hearing impairment. did not participate with nondisabled peers in regular education academic classes while in Mississippi.

's assessment team completed a report in October 1999. The team recommended that, due to the limited number of skills that had mastered on his IEP, early reevaluation be conducted if significant educational improvement was not achieved.

In May 1999, Kim Baggett, 's teacher, completed a reevaluation teacher narrative form. Ms. Baggett noted that was distracted easily and did not listen well, that he tended to focus on certain things visually instead of attending to the teacher, and that he self-stimulated when not actively involved in an activity.

's IEP completed in May 2000, noted that was in a non-graded classroom for the hearing impaired. The IEP's present level of performance ("PLP") section noted that had language, cognitive, and fine and gross motor delays. Because was unable to follow the general curriculum, he was to follow a preschool curriculum. The PLP noted that could imitate signs in 3-4 word phrases and spontaneously used please, no, stop, bird and

thank you independently. was noted to be able to make moderately dark marks with a pencil. The PLP noted that attended only when very actively involved in an activity. By the time of the May 2000 IEP meeting, Mrs. was accustomed to the IEP process.

In February 2001, and his family moved from Petal, Mississippi to Cuba, Missouri, which is located in Crawford County. On February 12, 2001, a meeting was held by the District to review 's IEP. Mr. And Mrs. and Joyce Bennett, Director of the Franklin County Special Education Cooperative ("Coop") were among those persons who attended the meeting. At the meeting it was determined that the District would accept the Mississippi IEP and place in the Educable Training Transition ("ETT") program at the Coop. Hearing impaired services were initially provided for a total of 60 minutes per week. The s agreed to placement at the Coop.

The Coop is located in Anaconda, Missouri and serves 13 school districts, including the Crawford County R-II School District. The bus ride between Cuba and the Coop can be as short as 30-35 minutes. The Coop provides low-incidence programs and serves children with a wide range of disabilities, including multiple disabilities, behavior concerns, and low cognitive ability. The Coop has four elementary classrooms, each with five children. The Coop's facility, located in the country about five miles from St. Clair, Missouri, previously was a K-8 grade building used by the St. Clair Public School. Each classroom has at least one teacher and a paraprofessional. Coop teachers have more experience dealing with children with more severe disabilities than teachers at regular school districts. Several children with cerebral palsy attend the Coop. Some of those students have bus rides as long as 1 1/2 hours. Students served in a state school setting generally have much lower ability than students at the Coop. The Coop serves students

with hearing impairments and has a teacher of the hearing impaired. The Coop also has four speech implementers, two speech therapists, a physical therapist, and an occupational therapist. The Coop provides opportunities for its students to be integrated with nondisabled children at the St. Clair Elementary School, which is about a 10 minute bus ride from the Coop. Teachers at the Coop, including speech therapists, teach with a total language approach and are familiar with augmentative communication devices because several Coop students use such a device. The Coop program emphasizes social skills by having students go out into public.

attended the Coop until the end of the 2000-2001 school year in May 2001. rode the bus from Cuba to the Coop without difficulty. No evidence showed that experienced fatigue as a result of riding the bus that resulted in an inability to attend while at school and Mrs. never told anyone that she believed the ride was tiring for . 's teachers at the Coop used sign language while instructing him. Some staff members used reference books to assist them when using sign instruction. Staff members also used other communication methods such as text communication cards, pictures, and a pex board. made minimal eye contact and Coop staff members consulted with each other about how to improve his eye contact. Shannon Banderman, who taught at the Coop, found that limited use of sign language using one to two word phrases, was most effective with . Trudy Oberbeck, instructor of deaf and hard of hearing children at the Coop, found that comprehended some single word signs. Ms. Oberbeck did not believe that she saw much change in in the areas she instructed him. fit very well into his classroom with respect to the other students and their disabilities.

In March 2001, 's IEP team met to review his IEP. The IEP contains extensive goals that address each of 's disability related needs. The IEP contains 30 minutes per week of PT and OT, just as in the last Mississippi IEP. 's IEP team determined that a self-contained placement was appropriate based on 's low ability level. was integrated with nondisabled peers for music, PE, and "Scruffy."

's IEP team met on May 9, 2001. The PLP noted that was reluctant to use sign language. The IEP contains extensive goals that address each of 's disability related needs. Progress reports made on May 8, 2001, show that had mastered several objectives and demonstrated emerging progress on most other objectives. Hearing impaired services were increased in the May 2001 IEP to a total of 60 minutes per week. Because of his low ability level, 's IEP team determined that he would not be assessed using the Missouri Assessment program ("MAP"), but instead, would be assessed using the MAP-A. The PLP noted that was reluctant to use any sign and refused to imitate most signs.

Sue Thornsberry became the Director of the Coop in 2001. The s visited the Coop in the spring of 2002 and spoke with Ms. Thornsberry. The s discussed with Ms. Thornsberry that the Coop's schedule for the school year was different than the District's schedule. The s explained to Ms. Thornsberry that babysat and that the different schedules would not allow her to babysit on days that the Coop did not have school. The s also discussed the difficulty of scheduling family vacations because of the different school schedules.

On May 25, 2001, the District conducted a meeting to consider evaluation information that had been gathered. In the Diagnostic Summary completed by the team,

it was reported that Mrs. said that “does have a few signs.” ’s speech-language skills as determined by the Brigance Inventory of Early Development were found to be in the 1.6-3.0 age level. was administered the Hiskey-Nebraska Test of Learning Aptitude, a test designed for deaf and hard of hearing children. ’s deviation IQ as compared to hearing children was 43. was 8 years and 4 months of age at the time of the test. His total learning age of 3-3 was equivalent to the score of deaf children 3 years and 3 months of age. The Diagnostic Summary included a report of an observation by Ms. Kremer at the Coop. The report noted that the teacher used sign with but that refused to make eye contact. The team determined that ’s disability category should be changed to multidisabled. Mrs. participated in the meeting.

attended the Coop for approximately 7 days at the beginning of the 2001-2002 school year. After attending the Coop for that brief period of time, had surgery on September 10, 2001. ’s left hip was reconstructed, his femurs were aligned, and heel and groin muscles were clipped. was in a cast from his rib cage to his toes for six to eight weeks. The cast prevented from going anywhere. After the cast was taken off, was in a lot of pain. After the surgery, received homebound services. Pam Fox provided ’s homebound services and used sign with .

In December 2001, the District received a note from ’s physician stating that could return to school. Because of the holiday season, did not return to school until after the new year. For a period of time went to school for part days.

An IEP meeting was conducted on February 21, 2002. The PLP noted that was returning to school from homebound instruction after having hip surgery. The February 21 IEP provided for to have a personal aide.

's teacher when he returned to school was Pam Fox. Ms. Fox knew sign language and used it constantly with . Ms. Fox's signing skill level was sufficient to meet 's needs. Although signing was used with , he would generally not make eye contact.

's IEP team met on May 15, 2002. Several advocates for the s attended the meeting. The EIP team, including the s and their advocates, discussed extensively 's EIP goals and there was agreement that the goals were appropriate. The team noted that had made progress on some of his goals and objectives. Pam Fox brought a folder to the meeting containing information that showed had made progress. The goals developed by the team addressed all of 's disability related needs, including improved eye contact. The team discussed 's use of a communication board.

Wendy Jensen, deaf education consultant from the Missouri School for the Deaf, also attended the May 15 IEP meeting. Cathy Kremer had asked Ms. Jensen to provide the District recommendations for serving . Ms. Jensen had observed at school and observed that would close his eyes and refuse to communicate. Ms. Jensen observed exhibit behaviors that were not typical deaf children. She suggested to the IEP team that an album containing pictures be used with to assist in developing communication skills and that such a technique be used before use of a communication board was attempted. The team agreed that 's developmental delays prevented him from participating in the regular education classroom with same age peers. The PLP noted the District's attempts to require to use sign as a means of communication and that allowing computer time as a means of attaining compliance had not been successful.

The IEP team agreed that 's placement would be outside of the regular classroom more than 60% of the day. After a long discussion, the team did not agree where the IEP

services should be provided. Although the s wanted to attend school in Cuba, the District determined that providing services in the ETT program at the Coop was most appropriate for . The District provided the s a Notice of Action dated May 15, 2002, stating the proposed change of placement.

At the s' request, the IEP team agreed at the May 15 meeting that would attend summer school with nondisabled students with the assistance of an aide. Pam Fox served as 's aide. did not interact with other students. The team also agreed that would receive OT and PT as extended school year services. took advantage of the extended school year services.

's IEP included reports on the IEP goals and objectives dated May 22, 2002. The reports show that had mastered some goals and made progress on others.

On August 21, 2002, the s requested a "meeting of Resolution" concerning 's placement for the 2002-2003 school year. Such a meeting was held on August 27, 2003. During the meeting, the s presented to the District a letter from Dr. Michael Noetzel. In the letter Dr. Noetzel stated that being on the bus as much as 1 1/2 hours per day would result in "significant adverse effect ...on ['s] physical capabilities." The August 21 meeting was the first time the s claimed that providing services at the Coop was not appropriate because of the bus ride. The s brought to the meeting. They discussed their concerns regarding the difference between the Coop's and the District's schedules and the inconveniences the different schedules would cause their family, including the problem that no one would be at home to care for if Mrs. could not be there.

Dr. Noetzel provided further clarification of his August 15, 2002, letter in his deposition. Dr. Noetzel agreed that any fatigue that might experience because of a bus



ride to the Coop is just one factor to consider when deciding what is appropriate for . Dr. Noetzel's recommendations regarding 's ability to travel by bus to the Coop are not based on 's individual needs and simply reflect general recommendations that he makes for children with cerebral palsy.

was evaluated at the Missouri School for the Deaf on September 24, 2002. was administered the Leiter-R. The results of the Leiter showed to have an IQ of 58 and suggested that functions in the mild to moderately mentally retarded range of nonverbal cognitive ability. The test examiner was Jennifer Hampton, who is deaf. Ms. Hampton accounted for 's cerebral palsy when testing him. Ms. Hampton found the test results to be a valid and reliable estimate of 's learning capabilities. Ms. Hampton noted that had difficulty making eye contact.

The panel finds the testimony of Ms. Hampton credible and finds that the results of the Leiter-R provide a valid and reliable estimate of 's learning capabilities. The results are consistent with the observations of persons who have worked with and with prior evaluation results.

's teacher at the District, Jeff Summers, teaches approximately 21 students in grades kindergarten through third grade each day in a cross-categorical classroom. All of the students are not in Mr. Summers's room at one time. Instead, the students, who have a wide range of disabilities, move in and out of the room during the day to receive services. is the only student who is in Mr. Summers's room all day. Because of the nature of 's disability and the disabilities of the other students at the District, is isolated both academically and socially at the District.

Ms. Thornsberry was around in the fall of 2001 and discussed with staff that served him. In her opinion, the Coop is an appropriate place for to receive services and could implement the May 15, 2002 IEP. In part, Ms. Thornsberry believed the Coop is appropriate for because he would be more at the same level as other Coop children than at the District. If attended the Coop, he would be in the ETT-2 classroom, which includes students of his chronological age and has five students, all of whom fall within the mentally retarded range.

rides the bus to the District's elementary school and gets on the bus at 7:05. generally arrives at school at approximately 7:20. The tardy bell does not ring until at 8:20. Mrs. was given the option to have picked up later so that he would arrive at about 8:20 and not be counted tardy, but she chose the 7:20 arrival time. The s' decision to have arrive at school one hour before school starts is not consistent with their claim that would become fatigued from riding a bus to the Coop and as a result suffer educationally.

Wendy Jensen does not believe that would benefit from a sign language interpreter or that he requires a sign language instructor, in part because does not have the necessary language base. Similarly, Ms. Hampton does not believe that a full-time sign language interpreter would be beneficial to . In Ms. Hampton's opinion, could benefit from learning individual signs and from a communication system using pictures such as the picture book used by the District. Nancy Quetermous agreed that the picture book used by the District would be helpful in communicating with . Ms. Oberbeck does not believe that would benefit from a full-time sign language interpreter.

Ms. Quetermous testified that the Coop is the best placement for . Ms. Parmenteer believes that the Coop is the best placement for because of the experience of

the staff and the increased ability for interaction with other students that the Coop would provide. Ms. Kremer believes that the Coop is the best placement for similar reasons.

The panel was concerned by the lack of substantial difference between the IEP of February 21, 2002, and the IEP of May 15, 2002. There was no doubt in the testimony as a result of the IEP OF February 21, 2002, that made progress in the local school. It was only after a review of the testimony of all of the witnesses and the isolation that was experiencing in the local school as opposed to the Coop that the panel reached the decision set forth below.

### **CONCLUSIONS OF LAW**

The main issue in this case is whether the appropriate place for to receive services is at the District or at the Coop. Related issues are whether has received appropriate instruction in sign language, whether he requires instruction in sign language by a certified instructor, and whether the District has provided appropriate assistive technology to .<sup>1</sup>

#### **I. The Individuals With Disabilities Education Act.**

Under the Individuals with Disabilities Education Act (‘IDEA’), all children with disabilities are entitled to a free appropriate public education (‘FAPE’) designed to meet their unique needs. 20 U.S.C. § 1412. Significantly, the IDEA does not prescribe any substantive standard regarding the level of education to be accorded to disabled children and does not require “strict equality of opportunity or services.” *Board of Educ. Of the Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 189, 195, 198 (1982). Rather, a local educational agency fulfills

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<sup>1</sup> As the s noted in their Proposed Findings of Fact and Conclusions of Law, their due process request “was triggered by the IEP of May 15, 2002”).

the requirement of FAPE “by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.”

*Id.* at 203.

The primary vehicle for carrying out the IDEA’s goals is the individualized education program (“IEP”). 20 U.S.C. § 1414. Significantly, an IEP is not required to maximize the educational benefit to the child or to provide each and every service and accommodation that could conceivably be of some educational benefit. *Rowley*, 458 U.S. at 199. As stated by the *Rowley* Court, an appropriate education program is one that is “reasonably calculated to enable the child to receive educational benefits.” *Rowley*, 458 U.S. at 207; *v. Columbia 93 Sch. Dist.* 217 F. 3d 1027, 1035-36 (8<sup>th</sup> Cir. 2000). Thus, in articulating the standard for FAPE, the *Rowley* Court concluded that “Congress did not impose any greater substantive educational standard than would be necessary to make such access meaningful.” *Id.* at 192. The Court concluded that Congress’s intent was “more to open the door of public education to handicapped children on appropriate terms than to guarantee any particular level of education once inside.” *Id.*

The key inquiry in determining whether a district is providing FAPE is to assess “whether a proposed IEP is adequate and appropriate for a particular child at a given point in time.” *Burlington v. Dept. of Educ.*, 736 F. 2d 773, 788 (1<sup>st</sup> Cir. 1984). Thus, the determination of whether an IEP is appropriate and reasonably calculated to confer an educational benefit must be measured from the time the IEP was offered to the student. *Fuhrmann v. East Hanover Bd. Of Educ.*,

993 f. 2D 1031, 1035, 1040 (3d Cir. 1993). In this case, the May 15, 2002 IEP is the focus of the panel's inquiry as it relates to the issues identified above.<sup>2</sup> In making the appropriateness determination, the panel must give deference to decisions made by professional educators. See *Independent Sch. Dist. No. 283 v. S.D.*, 88 F. 3d 556, 561 (8<sup>th</sup> Cir. 1996) (affirming the decision of a hearing officer and noting that the hearing officer was required to give "sufficient weight to the views of the School District's professional educators"); *Independent Sch. Dist. No. 284 v. A.C.*, 32 IDELR 143 (D. Minn. 2000) (noting that courts are to "afford[] deference to the expertise of school officials responsible for the child's education"). *Burilovich v. Board of Educ. Of the Lincoln Consol. Schs.*, 200 F. 3d 560 (6<sup>th</sup> Cir. 2000) (noting that "when reviewing an IEP we must keep in mind that the state and local educational agencies are deemed to possess expertise in education policy and practice").

**II. Does Not Require The Services Of A Certified Sign Language Interpreter Or Certified Sign Language Instruction In Order To Receive An Appropriate Education.**

There is no question that would benefit from instruction in the use of sign language. received such instruction in Mississippi, he has received it in Missouri, and the District agrees that it continues to be appropriate. However, contrary to what the s have suggested, there is no evidence to show that requires instruction by a person with any particular credentials or certification in sign language instruction.

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<sup>2</sup> The panel notes that the IEP goals and objectives were the result of a collaborative effort between the s and the District and finds that they appropriately meet 's needs.

During the hearing, the s emphasized that received a significant amount of sign instruction in Mississippi by a certified teacher of the hearing impaired. What the panel finds notable about this evidence is the relatively small number of signs that learned to use after several years of such instruction. Although difficult to quantify, the panel finds that , at best, currently knows fewer than 75 signs receptively and far fewer expressively. At the time of the May 15, 2002 IEP meeting clearly knew fewer signs. The relative lack of benefit from the intensive sign instruction in Mississippi that this evidence demonstrates undercuts the s' claim.

Overwhelming evidence shows that needs to learn single words and very basic language skills and that such instruction is consistent with his cognitive abilities. All of the professional educators who have worked with testified that 's signing needs do not require an instructor with any particular certification. The evidence showed, and the panel finds, that persons without formal training in sign instruction have been fully able to learn, through the use of books or other means, the signing skills necessary to appropriately instruct . Faced with a similar situation, the court in *Peter G. v. Chicago Public School District No. 299 Bd. Of Educ.*, held that persons instructing a student in sign language and serving him did not require formal training. 38 IDELR 94 (N.D. Ill. 2003). The student in *Peter G.* had Down Syndrome, was cognitively delayed, and was to be educated using a total communication method. Acknowledging the parties' different beliefs regarding the number of signs the student knew, the court found that he was using between 20-75 signs. The court noted that the training staff members had

received was based on a dictionary provided by the student's mother. The court also noted that staff members at the parents' preferred private placement were informally trained by other staff members and used self-study and on-the-job experience to gain knowledge.

As in *Peter G.*, the evidence shows that 's individual needs do not require that he receive instruction from a person with any formal training or certification. The persons who have worked with clearly have had the necessary skills to provide him an appropriate education. How those skills were obtained, whether through informal training and self-study, is irrelevant. The panel, therefore, finds that has at all times received appropriate instruction in the use of sign language.<sup>3</sup> Finally, the panel finds that the Coop is fully able to meet 's sign instruction needs.

### **III. The District Has Appropriately Met 's Needs For Assistive Technology.**

The s have claimed that the District failed to meet 's needs because it did not provide him with a communication board to use until January 2003. While it is true that had such a device – the Delta Talker – available to him in Mississippi and brought the device to Missouri, the evidence clearly showed that never used the device effectively to communicate. Thus, the underlying premise of the s' assertion, i.e., that needed a communication board, is not supported by the evidence.

What the evidence does show is that the Coop and the District have both appropriately met any needs had for assistive technology. Despite what its name

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<sup>3</sup> The panel rejects the s' suggestion that must be instructed in the use of Signing Exact English. No evidence supports any such requirement.

might suggest, assistive technology is not limited to high tech gadgets with bells and whistles that require batteries or some other source of power to operate. Instead, the term is defined very broadly to include “any item, piece of equipment, or product system ...used to increase, maintain, or improve the functional capabilities of a child with a disability.” See 34 C.F.R. § 300.5. The evidence shows that the Coop and the District both used such items with in the form of text communication cards, pictures, a pex board, and a picture book. Significantly, undisputed evidence demonstrated that received educational benefit while at the Coop and the District using the items provided by the Coop and the District.<sup>4</sup>

The panel notes that the use of these devices is consistent with the testimony of Wendy Jensen and her recommendation to the IEP team at the May 15, 2002 IEP meeting that use a picture board because he did not have the necessary skills to successfully use a communication board. Notably, ’s successful use of a very basic communication board since January 2003 serves to confirm that Ms. Jensen’s recommendation was on the mark. Thus, while a communication board may now be a necessary part of ’s education program, it was not necessary for him to have the use of such a device in order to receive a free appropriate public education at the time of the May 15, 2002 IEP meeting. In short, the panel finds that the District has at all times met ’s needs for assistive technology.

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<sup>4</sup> In considering the educational benefit that has received, the panel has been mindful of the extensive disruption in the services provided to caused by his surgery in the fall of 2002.



**IV. The Franklin County Special Education Cooperative Provides The Least Restrictive Environment For And Is The Appropriate Place For Him To Receive Services.**

Except for their contention that would be fatigued by the bus ride to the Coop, the s did not identify any other specific reason why they believe the Coop cannot appropriately serve . In fact, Mrs. acknowledged that the Coop has a good program. Plainly, the s' main reasons for wanting to attend school in the District are based on family convenience and a desire for to attend school close to home in his community. Considering all appropriate factors, the panel finds that the Coop is the appropriate place for to receive services.

By all accounts, has significant delays in many areas of development, including cognitive impairment. The evidence showed that is isolated both academically and socially at the District. Significantly, the isolation is the result of the nature of 's disabilities and the District's population of students with disabilities, both factors over which the District has no control. The District does not have students who are 's peers. The Coop, by the nature of the students it serves, has students who are more nearly 's peers. Because of its student population, the Coop, unlike the District, also has the significant advantage of allowing to attend school for a full day with the same small group of students. Taken together, these two factors significantly increase " opportunity to interact with other children. In this way, the Coop provides a less restrictive environment than the District" elementary school. See 34 C.F.R. § 300.550. In addition, the Coop would provide significant opportunities to interact with nondisabled students, just as in the District and in Mississippi.

An additional reason for serving at the Coop is the experience of the Coop's staff. By their training and experience, the members of the Coop staff are more able than District staff members to meet 's complex educational needs. Coop staff members who testified noted that they were able to collaborate in their efforts to serve . Given the District's population of students, the District's special education teachers simply are not able to get the same experience working with severely disabled students as the Coop's staff and are not able to engage in the same kind of collaborative effort.

Due process and court decisions fully support the District's decision to provide services at the Coop. In *Switzerland County Schs.*, 35 IDELR 264 (Indiana SEA 2001), the hearing panel considered a situation parallel to the instant matter and found in favor of the school district. The panel observed that the student's home school was not equipped to adequately implement her IEP because it did not offer a multi-handicapped program like that available at the cooperative, nor could it provide the same level of staff or resources. Similar to the situation with , the hearing panel also noted that placement in the home school would result in the student being isolated for a substantial portion of the school day.

The hearing officer in *Arlington Public Schools*, 37 IDELR 119 (Massachusetts SEA 2002), recognized that placement in a student's neighborhood school, rather than a more appropriate centralized program, can actually have a negative impact on the provision of special education services to a student. Indeed, the hearing officer in *Arlington* noted that if the student was

placed at her home school (as her mother wished), rather than at a language-based program at a centralized facility, the services provided would be “disjointed and lack the necessary structure.” Thus, the hearing officer determined that the benefits of placement at the centralized facility greatly outweighed the benefits of placement at the child’s home school.

Similarly, in *China Spring Independent School District*, 21 IDELR 468 (Texas SEA 1994), the parents of a student with a hearing impairment who received special education services from a regional cooperative sought the implementation of her IEP at her home campus. The hearing panel rejected the parents’ request, noting that federal regulations do not mandate placement in the school closest to a student’s home when his or her IEP could be most appropriately implemented elsewhere. The panel also voiced doubt that the home school could duplicate the quality of the regional cooperative, and thus determined that the cooperative was the appropriate placement.

Recently the Eleventh Circuit held that the IDEA does not require districts to equip a classroom with facilities necessary for the implementation of an IEP on a regular campus when appropriate facilities are already in place elsewhere.

*Michael P. by Monica P. v. Indian River County Sch. Bd.*, 37 IDELR 186 (11<sup>th</sup> Cir. 2002). In *Michael P.*, the mother of a student with multiple disabilities objected to his placement at a facility restricted to special education students, requesting instead that he be placed in the special education classroom at the local middle school. The court held that placement at the middle school was not

appropriate because the special education facility was better equipped to meet the needs of the student.

The s' suggestion that the Coop is not appropriate because would suffer educationally because of fatigue from a bus ride to the Coop is not supported by the facts. There is no evidence that has in the past or would in the future experience such fatigue. And the law clearly does not prohibit a 40-minute bus ride. In *Switzerland*, the IEP of a student with multiple disabilities provided that the child would receive her special education services at a special education cooperative located 45 minutes to one hour away from the student's residence, rather than at her home school. As in this case, the parent and the child's doctor in *Switzerland* opposed the placement at the cooperative facility because of concern about the "prolonged transportation from home to school." The panel disagreed with the parents and concluded that the student's placement at the cooperative was appropriate.

The s' opposition to the Coop placement because of alleged inconvenience, while understandable, cannot be the basis for rejecting a placement that meets 's individual needs. See *China Spring Independent School District* (the parents complained that the child's attendance there caused scheduling problems because her school vacations differed from those of her siblings. Who attended their neighborhood school. The hearing panel rejected the parents' request, noting that federal regulations do not mandate placement in the school closest to a student's home when his or her IEP could be most appropriately implemented elsewhere).

The panel, therefore, agrees with the District that 's needs can best be met at the Coop.

### CONCLUSIONS OF LAW

The District has at all times met 's needs with respect to instruction in sign language and assistive technology. In meeting those needs, the District has at all times provided a free appropriate public education. has at all times while residing in the District received educational benefit from the services provided by the District. Future services should be provided to at the Coop.

The panel finds in favor of the District and against the s, enters judgment in favor of the District, and dismisses the s' claims.

/s/ Robert P. Baine, Jr.  
Robert P. Baine, Jr., Chairman

/s/ Audrey Yarbrough  
Audrey Yarbrough

X Agree (in part)  
X Disagree (in part) (see attached)

/s/ Terri Shank  
Terri Shank

X Agree  
☐ Disagree